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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JOSE ALFONSO MONZON, Defendant and Appellant.	H033564 (Santa Clara County Super. Ct. No. CC804993)

The 16-year-old daughter of defendant Jose Alfonso Monzon reported to her counselor at school that defendant had " 'raped' " her when she was six years old, and that he had often " 'touch[ed]' " her and " 'penetrate[d]' " her. She later told a detective from the San Jose Police Department that defendant " 'penetrate[d]' " her vagina or anus with his penis or with his fingers over a two-year period, once or twice a month or every other month. The incidents occurred when defendant was intoxicated and thinking about the child's mother, who resided in Guatemala. She knew defendant was intoxicated because he would slur his words and he smelled of alcohol. The last incident occurred when she was in the first grade.

The detective had defendant's daughter conduct a pretext phone call to defendant. During the call, defendant's daughter was upset and crying. Defendant said that he did not remember any incidents of molestation, and he asked his daughter to come home so

that they could talk about it. The detective later interviewed defendant at the police department. Defendant admitted that, while his daughter was between five and eight years old, they slept in the same room on different beds and that he drank a lot. While he did not admit or deny the molestations, he stated " '. . . it was possible that he could have molested the victim and that he did not remember.' "[1]

Defendant was charged by felony complaint filed May 13, 2008, with three counts of aggravated sexual assault of a child under 14 and 10 or more years younger than defendant (former Pen. Code, § 269, added by Stats. 1994, 1st Ex. Sess., ch. 48, § 1, p. 8761, eff. Nov. 30, 1994).[2] On August 26, 2008, defendant appeared with appointed counsel. The court granted the prosecutor's motion to amend the complaint to add count 4, which alleged a violation of section 288, subdivision (b)(1) [forcible lewd conduct on a child under 14]. Defendant waived his right to a preliminary hearing and entered a negotiated plea, whereby he pleaded guilty to count 1 and count 4 of the amended complaint with the understanding that he would be sentenced to prison for 21 years to life. Both counsel stipulated to a factual basis for the plea based upon the police report in the court file.

At sentencing on October 3, 2008, defendant's daughter was present in court but did not wish to make a statement. She had written a letter that was presented to defendant and to both counsel but not to the court. Pursuant to the plea agreement, the court sentenced defendant to 21 years to life in prison. The sentence consists of the middle term of six years on count 4, and a consecutive term of 15 years to life on count 1. The court dismissed counts 2 and 3 on motion of the prosecutor.

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[1] The facts underlying defendant's conviction are taken from the probation report.

[2] All further statutory references are to the Penal Code.

Defendant filed a timely notice of appeal (Cal. Rules of Court, rule 8.304(b)), and we appointed counsel to represent him in this court. Counsel has filed an opening brief which states the case and facts but which raises no issue. We notified defendant of his right to submit written argument in his own behalf within 30 days. That period has elapsed and we have received no response from defendant. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and *People v. K*elly (2006) 40 Cal.4th 106, we have reviewed the entire record and have concluded that there is no arguable issue on appeal.

The judgment is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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MIHARA, J.

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MCADAMS, J.